

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN RICK DALE**, on January 31, 2001
at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Bill Eggers (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: 126, 1/15/2001; 125, 1/15/2001
Executive Action: 118; 199; 126

HEARING ON 126

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents: Jan Sensibaugh, DEQ
Angela Janacaro, Montana Mining Association
Frank Crowley, ASARCO
Paige Dringman, Montana Association of Realtors
Anne Hedges, MEIC
Russ Ritter, MRI
Patti Keebler, Montana AFL-CIO
John Wilson, Trout Unlimited
Don Allen, WETA

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1}

REP. CINDY YOUNKIN, HD 28, Bozeman, stated that HB 126 is a procedure bill, within the DEQ, having to do with who hears the appeals that are filed within the department. It would transfer responsibility for holding contested case hearings from the department to the Board of Environmental Review. The amendments are necessary to allow the director of the department to participate in department decisions and eliminate and eliminate any conflict of interest. There are many editorial revisions that go along with the bill. It is also intended to clarify that the Montana Administrative Procedures Act would apply to contested case hearings. There are two other sections that address sanitation and subdivisions and the opencut mining act.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4.6}

Jan Sensibaugh, DEQ, submitted written testimony
EXHIBIT(nah25a01).

Angela Janacaro, Montana Mining Association, stated that the provisions that the contested case hearings are held under the Board of Environmental Review provide for a separation of power, considering policy. She urged a do pass.

Frank Crowley, ASARCO, stated that this bill will be good for the department. He stated that the metal mine reclamation portion of the bill causes him some concern. He doesn't like the change in

Section 10 of the bill where the word "administrative" is substituted for the word "civil." He does not agree that is simply a procedural change but rather a substantive change.

Don Allen, WETA, stated that he is in support of the changes in the contested case portion of the bill. He stated that he is also concerned with Sections 10 and 12. There may be a drafting concern between the two sections. Overall he supports the bill.

Paige Dringman, Montana Association of Realtors, stated that setting up a contested case proceeding, in front of the board, allows the director of the department to be more involved in the policy that drives the department. It also comports with notions of due process. She encouraged the committee to do pass the bill.

Anne Hedges, MEIC, stated that this must be a good bill seeing the wide range of proponents. It just makes a lot of sense. She also thinks that Section 10 is not necessary and those changes deserve a hearing of their own.

Russ Ritter, MRI, stated that he supports the legislation.

Patti Keebler, Montana AFL-CIO, stated that she supports the bill. Laws and rules to protect the health and safety of working families are very important to the AFL-CIO. She also appreciates the suggested hearing process changes in the bill.

John Wilson, Trout Unlimited, stated this is truly a modernization of the department. He urged a do pass.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 20.6}

REP. LASZLOFFY asked **Ms. Sensibaugh** how many appeals per year are heard. **Ms. Sensibaugh** stated that last year there were three in front of the director. There have been quite a bit more in front of the board, maybe ten last year. **REP. LASZLOFFY** then asked if this will just be a small increase in the board's work load. **Ms. Sensibaugh** answered yes.

REP. STORY asked **Ms. Sensibaugh** to explain civil v. administrative, the concern some people had with Section 10. **Ms. Sensibaugh** stated that language should not be in the bill. **REP. STORY** then asked why the language in Sections 6 and 8 is

different from the rest of the bill. **Ms. Sensibaugh** stated she does not know why the language is in there, it must have been done by the lawyers.

REP. LASZLOFFY asked **Ms. Sensibaugh** on page 4, starting on line 10, we are striking the language that allowed for a judicial review of the penalty and inserting language that calls for the hearing under part 6, instead of part 7, under title 2, chapter 4. When it talks about a judicial hearing, is that in court or within the department? **Ms. Sensibaugh** stated that is judicial as in court. The department provides for the hearing and then they could go to the court, after the hearing, and challenge the decisions.

REP. DALE asked **Ms. Sensibaugh** if it is required now, if an entity appeals department decision, that before the review or appeal is processed, they post a bond. **Ms. Sensibaugh** answered no. Currently, if the department appeals a bond amount, under the Hard Rock Mining Act, they do not need to post a bond prior to that appeal. **REP. DALE** followed up stating, "So nothing would change with this procedure?" **Ms. Sensibaugh** stated, that is correct. This does not change any of the process from current procedures.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 25.8}

REP. YOUNKIN answered **REP. STORY's** question about why Section 6 doesn't state that MAPA applies. The reason is because in 82-4-130, which applies to the same section, it specifically says that MAPA applies to underground strip mining. In Section 8, it doesn't state that it specifically applies to MAPA because there is another section, in the same body of law, that says MAPA applies. She stated that she does not object to the amendment to strike all parts of the bill, particularly on page 8, section 10, that changes from a civil penalty to an administrative penalty. She asked Mr. Mitchell to prepare amendments to do that.

HEARING ON 125

Sponsor: **REP. CINDY YOUNKIN, HD 28, Bozeman**

Proponents: **Art Compton, DEQ**
Frank Crowley, ASARCO
John Wilson, Trout Unlimited
Angela Janacaro, Montana Mining Association
Don Allen, WETA
Patrick Judge, MEIC

Patti Keebler, Montana AFL-CIO
Douglas C. Parker, ASARCO

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 27.5}

REP. CINDY YOUNKIN, HD 28, Bozeman, stated HB 125 has to do with temporary water quality standards. It would allow the use of temporary water quality standards in restoring impacted streams to high quality from existing low quality. The standards would allow a responsible party to invest in accomplished cleanup activities without an undue threat of being prosecuted for having water quality violations. The Board of Environmental Review grants petitions for development of temporary standards and approves the plan which implements the cleanup activity. The Board generally prefers to approve implementation plans about 60 days after a grant of a petition. An applicant doesn't have to submit a draft plan until 180 days after the petition is granted. The DEQ and the Board need to be able to review the draft implementation plan in advance. They also need more time to work with the applicant, other agencies and the interested public to ensure that cleanup plans are as well developed and cost effective as they can be. This bill requires the applicant to submit a draft implementation plan 90 days in advance of their petition to the board. It also allows the Board and the Department to modify a cleanup plan, if required. Finally, the bill calls for an annual report that will lay out a logical sequence of cleanup activities for the next field season.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 30}

Art Compton, DEQ, stated that the temporary water quality standards addressed in HB 125 are an important tool. Those standards are the means by which the owner or responsible party for a piece of impaired property can invest in cleanup measures. It is an important process and the changes are intended to make the process more efficient. Present law requires the submittal of a support document and implementation plan within 180 days of the Board being petitioned for temporary water quality standards. The Board likes to address those standards at their next meeting which is 60 days after they approve the rule making. Obviously that time frame just doesn't fit. The bill would require an applicant to come in 90 days. This would allow time for staff analysis and deliberation before recommendations are made. The

bill would also change the goal of temporary water quality standards from improving water quality to achieve an additional beneficial use to achieving all beneficial uses for which that water body is designated. It would bring a fuller consideration of the ultimate goal of temporary water quality standards. The bill would clarify the content of the preliminary implementation plan to describe the existing chemical, biological and physical condition of the water body. The bill would require the department or the petitioner to develop a detailed annual work plan describing implementation plan activities that would be conducted during the next field season. The DEQ staff and the Board of Environmental Review would like the ability to ensure that there is some progress on remediation efforts on an annual basis. The bill would require the director of the DEQ to approve the annual work plan submitted by March 1st of every year. It would require the Board to consider the progress made in restoring water quality during its three year review of temporary standards. Now the Board has to review those plans every three years, this bill would increase that to every year. The bill would allow the Department and the Board to modify the implementation plan if there is convincing evidence that the plan needs modification. The provision would allow the modification during the periods between the Board's three year reviews. Finally, the statute now allows the Board to conduct rule making absent any petition or input from applicants, etc. The DEQ could not imagine a situation in which that would occur. **REP. YOUNKIN** expressed concern over this because it may limit the discretion of the Board to initiate rule making. The DEQ will be working with the sponsor to strike that section that takes that ability away from the Board.

Frank Crowley, ASARCO, submitted written testimony from **Douglas C. Parker, ASARCO**, and went over it in extensive detail **EXHIBIT (nah25a02)**. **REP. DALE** stated that he reserved the right of the Chair to decide whether **Mr. Crowley** was representing a proponent or opponent.

John Wilson, Trout Unlimited, stated that fishing brought about \$191,000,000 to Montana's economy last year. If we are able to bring those streams up to fishable levels, that could be considered economic development. Healthier streams and rivers make a healthier economy. It is unfortunate that Montana has to have temporary water quality standards but it is a reality. He disagreed with **Mr. Crowley**, it is not a reality having to meet all four of those standards is too high of a goal to be set. If it can't be set then the stream should be reclassified in terms of what beneficial uses it can support. That tool is available to both the Legislature and the Department. That is provided for on page 3, line 29 of the bill. He was concerned that there is

potential twenty year fuse on temporary water quality standards. Some of the problems may require 20 years to fix. He stated that he does support the bill and urged and do pass.

Angela Janacaro, Montana Mining Association, stated that she had a hard time in deciding whether to be an opponent or proponent of HB 125. She stated that she does believe the temporary water quality standards are an important tool for the mining industry. She does have concerns with the goals of the temporary water quality standards. She urged a do pass.

Don Allen, WETA, stated that he sat through the Board deliberations last year. They were very careful, deliberate and professional in their approach on how to handle the temporary quality standards. There are situations, not just in mining, where this could be used as a way to improve water quality. He spoke of some concerns but stated overall this is a good bill and urged a do pass.

Patrick Judge, MEIC, stated this bill is an improvement of the current law. Temporary water quality standards are a departure from the standards which have been developed to protect human health and the environment. Therefore, they should be allowed only very rarely and only when conditions are very extreme. It should be considered a privilege and in return it is reasonable to expect the modest provisions that are contained in the bill. The public expects the environmental laws of the state of Montana to protect their health and natural environment. Therefore, the public assumes that the standards were established with efficient scientific studies, there is sufficient monitoring, that the standards are enforced and that penalties are significant enough to deter companies from committing violations. He urged a do pass as this bill is a step in the right direction.

Patti Keebler, Montana AFL-CIO, stated that AFL-CIO supports HB 125 in it's original form.

Opponents' Testimony: None.

Informational Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 58.5}

Bob Anderson, hydro-geologist, Hydrometrics, Helena, said he was involved with the temporary standards process for ASARCO and the Upper Blackfoot Mining Complex. He stated that as far as the goals are concerned, making these goals too stringent for the temporary water quality standards may defeat the purpose. The temporary standards are meant to apply for a limited period of

time when a property owner or P.R.P. can implement a cleanup program. When you go to these sites you don't know, right up front, whether you can meet all of the beneficial uses of water quality standards after cleanup. The temporary standards allow you to implement some cleanup, in compliance with water quality standards, and then see what the prognosis is in terms of meeting beneficial uses and water quality criteria. If, after that period, you can't then other regulatory mechanisms can kick in. He does not believe listing all beneficial uses as a goal of temporary water quality standards is necessary. Applying stricter goals for the temporary water quality standards could actually deter private industry from implementing voluntary cleanups. He stated that he is in agreement with the changes to the schedule as they would be beneficial and speed up the process. He gave examples from the Upper Blackfoot Mining Complex.

{Tape : 1; Side : B; Approx. Time Counter : 0.1}

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 0.4}

REP. CLANCY asked **Mr. Compton** if he considered any of the proposed changes to the bill by **Mr. Crowley** as friendly and why. **Mr. Compton** stated that there is a lot of common ground for work on addressing the issues. As far as the change in the goal from adding an additional beneficial use to all the beneficial uses, all the beneficial uses only correspond to the designated beneficial uses for that stream reach. The DEQ's perspective would be that the appropriate determinant of the level of cleanup should be the classification of those waters. If that is not economically or technically achievable then there is a process in place to change those classifications to reflect the realities of what technology and appropriate amount of money can be put into that cleanup effort. He stated that he understands the concern and is sympathetic to it but would approach a different way of resolving that and that would be to change the stream classification. The 90 day versus the 60 day filing is not a problem with the DEQ. With respect to the 30 days after the Board acts to modify the implementation plan in response to the Board's actions, that is probably a reasonable time frame. Regarding the inconsistency between the reference to beneficial uses and water quality standards, he would be willing to work with the constituents on and adopt language that satisfies everyone. Regarding the issue of the DEQ being able to initiate a change in the work plan, the Department would be willing to modify that language to make everyone comfortable. Perhaps the Department should be required to approach the Board and ask them to modify the implementation plan.

REP. BROWN asked **Mr. Compton** what is a stream reach? **Mr. Compton** stated it is a TMBL term which is the DEQ's way of differentiating a segment from the whole stream. **REP. BROWN** followed up asking, if this has only been used once in the past 20 years, what are the three main reasons you see for changing this law? **Mr. Compton** stated that the recent and thorough exercise of establishing temporary water quality standards for the Upper Blackfoot Mining Complex indicated there are things to be done to make the process more efficient.

REP. STORY asked **Mr. Compton** if a person is in violation of the water quality act, what are the penalties? **Mr. Compton** stated that it depends on the situation. He gave an example. **REP. STORY** followed up asking what the penalty is? **Mr. Compton** redirected the question to **Jan Sensibaugh** who stated that it is up to \$25,000 per day. **REP. STORY** then asked, "if we didn't have an opportunity to put in temporary standards and a person was in possession of property ... violating the standards, would they have any remedy?" **Ms. Sensibaugh** stated no, the DEQ would just do an enforcement action, go to court and put them on a compliance plan. Followup by **REP. STORY** - "What is the difference between going into a situation where you put temporary standards on a stream reach or if the person goes in and asks for a permit to degrade or goes through the non-degradation process. Is there any correlation between the two?" **Ms. Sensibaugh** deferred the question to **Robert Raisch, DEQ**. He stated the difference is that the non-degradation provision only allows you degrade, at the most, to the standards. In this situation the water quality is already worse than the standards. Non-degradation is not an issue in this at all. **REP. STORY** asked if this allows people to deal with the situation they have or take one step back in order to take one step forward. **Mr. Raisch** stated yes, this process allows them time to cleanup the waters and by establishing temporary water quality standards it gives them temporary immunity from enforcement action by the DEQ. Followup by **REP. STORY** - How much work went into the process where every segment of the stream was classified. **Mr. Raisch** stated that process was done years ago and wasn't done on every specific reach water. It was determined what a certain stream reach or section should achieve. It is not what they are achieving, it's the potential of what that water could achieve. **REP. STORY** followed up asking so some of the sections could be required to meet more beneficial uses? **Mr. Raisch** stated if the water was properly classified then the beneficial uses assigned to that classification should be achievable.

REP. STORY asked **REP. YOUNKIN** regarding page 3, line 4, subsection 6 of the bill, if the Board adopted this work plan

sometime after March 1st would it apply for that first year?

REP. YOUNKIN stated, obviously it would not apply for that first year but they would have to have it done by March 1st of the next year. Followup by **REP. STORY** - "I agree with you but that's not what the statute says." He suggested a change in wording. **REP. YOUNKIN** stated the law does not presume an impossibility but we can discuss changes.

REP. DALE asked **Mr. Compton** are companies the only P.R.P.'s? Are you aware of any circumstances where public entities or those who own properties could be responsible parties under this consideration. **Mr. Compton** redirected the question to **Sandi Olsen, DEQ**. **REP. DALE** restated the question stating, "The mindset seems to be that companies are the only responsible parties than can ever function under this proposed legislation or have functioned under others. Do you perceive any possibility where there are responsible parties other than companies?" **Ms. Olsen** stated that, in terms of general superfund liability, anyone who has owned a property, regardless of their causation of a problem, has the potential to be liable.

REP. LAIBLE asked **Mr. Compton** in the last 20 years have you only had one company that utilized these temporary water quality standards? **Mr. Compton** stated that the Crown Butte Mine went through a temporary water quality standard procedure as well. That may have been before these statutes were put into effect. ASARCO's efforts at the Upper Blackfoot Mining Complex are the only execution of the process that's gone under these water quality standards. Are you asking how do we know this is broken if we have only used it once? **REP. LAIBLE** stated, that's part of it. **Mr. Compton** stated it is DEQ's motivation to tighten the process up and make it more defensible. **REP. LAIBLE** asked if this is a voluntary program. **Mr. Compton** stated, no. The voluntary part and not discouraging industry or individuals comes into play when they are considering acquiring the property. He believes that once the individual or company owned the property it would not be voluntary. Followup by **REP. LAIBLE** - are these two properties the only two in the state, that you know of, that are having illegal discharges? **Mr. Compton** said he is quite certain they are not. There are a host of remediation efforts going on in the Department's abandoned mine program. The superfund programs deal with impaired sites that have responsible parties all of the time. **REP. LAIBLE** asked if tightening up these regulations will encourage people to come forward and work with the DEQ in order to clean up their water quality or will it discourage them. **Mr. Compton** stated that, if **Mr. Crowley's** comments on behalf of **Mr. Parker** are any indication, I don't think it is going to help. What the bill does do is benefits the

Board of Environmental Review to both initiate rule making, accept the temporary water quality petitions and to act on those petitions to designate temporary water quality standards.

REP. STORY asked **Mr. Compton** how hard it is to reclassify a stream segment? **Mr. Compton** stated that he believes if the stream was originally properly classified it requires legislative action. The Department can reclassify a stream if they can demonstrate that it is misclassified.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 26.5}

REP. YOUNKIN stated that the temporary water quality standards were first enacted in 1995. Therefore, there hasn't been a lot of time to work out the kinks in the process. Usually you have a very serious situation that needs to be fixed. We don't want to create a situation that prevents people from coming to the department for help. This legislation would help get any impaired water sources cleaned up and we need to have a situation that works for everyone. One other source that would not be in compliance is the Clark Fork River which is under Federal Superfund Law.

EXECUTIVE ACTION ON HB 118

{Tape : 1; Side : B; Approx. Time Counter : 32}

The amendments for HB 118 were passed out **EXHIBIT (nah25a03)**. There were also two documents, regarding the bill, passed out **EXHIBIT (nah25a04)** **EXHIBIT (nah25a05)**.

Motion: **REP. CLANCY** moved that **HB118 DO PASS.**

Motion: **REP. CLANCY** moved that the **AMENDMENTS FOR HB 118 BE ADOPTED.**

Discussion:

REP. CLANCY went over what the bill is trying to accomplish and what the amendments, which are friendly, will do.

REP. HARRIS stated that he considers the bill and the amendment to be very worthwhile. It is a housekeeping measure that is very much needed and overdue.

REP. STORY stated that someone was concerned about the word "imminent" in the amendment and the word "substantial" would be

more appropriate. There were concerns about the time relation that imminent implies.

REP. YOUNKIN stated that the federal law says, "imminent and substantial."

REP. GUTSCHE stated that her concern is that "imminent danger" is a pretty high bar, higher than she would like to see.

REP. CLANCY suggested the committee ask **Art Compton, DEQ**, his opinion of that. **Mr. Compton** stated that the Department would be happy with either word or a combination of both words. The intent is, if it is a serious and timely threat to public health or a serious risk to the environment then perhaps that degree of immunity would not apply.

REP. LASZLOFFY stated that he would rather it say "imminent and substantial."

Substitute Motion: **REP. LASZLOFFY** made a substitute motion to **AMEND THE AMENDMENT TO INCLUDE THE WORDS "AND SUBSTANTIAL" AFTER IMMINENT.**

Discussion:

REP. STORY stated that he agrees with the substitute motion. You have to remember, the whole purpose of this person's position is not to be a policeman; it's to help get things done.

REP. GUTSCHE stated she agrees that does clarify but she still thinks the bar is high. She suggested that it should just say "any danger." We want people to report any problem not just if they are imminent and substantial.

REP. LASZLOFFY stated this is the part of the bill that will allow the bill to move through. He stated that he would oppose the bill if the amendment wasn't adopted. This reestablishes the credibility of the ombudsman. These businesses need someone who is objective and credible that they can work with to become compliant.

REP. ERICKSON stated that he is still concerned with the bar being too high. What language is the next bar down from "substantial?"

REP. LAIBLE stated he thinks the committee is missing the point. If the standard is lowered then the small businessman won't trust the ombudsman because whatever he says could be used against him. Isn't the whole point of this bill to help these people cleanup

what they are doing? If we make it so onerous we will miss the point of what the bill is. He agrees with **REP. LASZLOFFY**.

REP. GUTSCHE asked **REP. LAIBLE** where does it say it will be used against the small business?

REP. LAIBLE stated that the reason this is an ombudsman is so that he/she can operate separately from the enforcement arm of the DEQ. If we allow this to just say "any danger" then there is no protection for the small business person.

Vote: Motion carried 13-7 with Cyr, Eggers, Erickson, Gutsche, Hurdle, Tramelli, and Wanzenried voting no.

Motion/Vote: **REP. CLANCY** moved that **HB 118 DO PASS AS AMENDED**. Motion carried 19-1 with Wanzenried voting no.

EXECUTIVE ACTION ON HB 199

{Tape : 1; Side : B; Approx. Time Counter : 46.1}

Motion: **REP. GUTSCHE** moved that **HB 199 DO PASS**.

Motion/Vote: **REP. WANZENRIED** moved that **HB 199 BE TABLED**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 126

{Tape : 1; Side : B; Approx. Time Counter : 49.1}

Motion: **REP. YOUNKIN** moved that **HB 126 DO PASS**.

Motion: **REP. YOUNKIN** moved that the **AMENDMENT FOR HB 126 BE ADOPTED**.

Discussion:

REP. YOUNKIN stated that the amendment changes the language regarding a civil penalty versus an administrative penalty back to the original language.

Vote: Motion carried unanimously.

Motion: **REP. YOUNKIN** moved that **HB 126 DO PASS AS AMENDED**.

Discussion:

REP. STORY the language in sections 6 and 8 is also stated in the Montana Administrative Act so why don't they just leave the lines out. Instead of putting confusing language in the bill why don't they say they can adopt a different set of rules. He is referring to page 6, line 21 and page 7, line 27.

REP. YOUNKIN stated that she is not sure what **REP. STORY** wants to do with the language.

REP. STORY stated that he doesn't see why you need to have a statement in section 8 that provides other than what's provided in the following sections.

Larry Mitchell stated that he has no idea why that section is in there. He stated that **REP. STORY** is correct that the following section states specifically that these things will be taken through the MAPA process. Section 8, subsection 2, seems to confuse the issue by adding another direction of the procedure.

REP. STORY stated it is confusing language.

REP. HURDLE stated it simply assumes that the Board would adopt those rules according to MAPA procedures. She doesn't think that there is a conflict.

REP. YOUNKIN stated that she does not think there is a conflict either. MAPA says it sets out the rules by which you can make rules. The Board referred to here is a rule making board. This is also going to pertain to contested case hearings.

REP. BALES stated that on page 7, line 26, it states that it could do hearings under provisions of this part. Then they go on ahead and say rules adopted by the board. Was there something, some hole that the Board needed to adopt additional rules in order to function properly? It was evidently a conscious effort to broaden it and why was that done?

REP. YOUNKIN stated there would be times when the Board would, prior to the time there is a contested case hearing, where the board would or could have adopted rules which pertain to a particular water quality act. She stated that she thinks what they are getting to is other rules that the Board may adopt in reference to specific, underlying, substantive laws which all have to be in compliance with MAPA.

REP. BALES asked if it would have been better to put "some additional rules adopted by the Board" instead of "or rules adopted by the Board."

REP. YOUNKIN said she does not believe so.

Motion: REP. STORY moved that an **AMENDMENT FOR HB 126 BE ADOPTED.**

Discussion:

REP. STORY stated the amendment would strike the words "or rules adopted by the board" on page 6, line 21 and page 7, line 27.

REP. YOUNKIN stated that she is not comfortable with the amendment until she speaks with Greg Petesch who drafted the bill. Therefore, she postponed action on HB 126.

ADJOURNMENT

Adjournment: 5:05 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah25aad)